IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2656 of 2006
Date of decision : 1.9.2006.

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Parties Name

Hanuman Parshad

..... appellant

vs.

Ram Kishan and others

.....respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. J.V. Yadav, Advocate
for the appellant.

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S.N. Aggarwal, J.

Hanuman Parshad-appellant and respondents No. 12 to 15 are the legal heirs of Bhagwana. Said Bhagwana, Tara Chand – respondent No.11 and one Sheo Ram (predecessor in interest of respondent no.2) were the sons of Nathu, while Smt. Nimli (predecessor interest of respondents No. 3 to 6), Smt. Mankali and Smt. Kalawati @ Sarti were the daughters of said Nathu. On the death of Nathu, the mutation was sanctioned on 21.11.1968 in favour of all of them. Sheo Ram, Bhagwana and Tara Chand filed a civil suit alleging that they alongwith Smt. Mankali and Smt. Sarti were the owners of the land measuring 135 Kanals 7 Marlas situated in village Nuni Awal, while the right of Smt. Nimli to inherit the estate of her

father Nathu was disputed and the mutation sanctioned in favour of Smt. Nimli was challenged. The said suit was dismissed by the learned trial Court on 30.4.1974 by holding that Smt. Nimli was one of the legal heirs of Nathu and therefore, she was entitled to his inheritance in equal share. The appeal (Civil Appeal No. 46 of 1974) was filed by them against this judgment, in which a compromise decree was passed on 15.8.1976 in the following terms:-

> "In view of the statement of the appellants respondent No.1 and counsel for respondents, the appeal is accepted with costs. The appellants have paid Rs.4000/- to respondent No.1 in court. They have agreed to pay the remaining amount of Rs.2000/- to her on or before 1.10.1976. In case they make the payment of the said amount within the specified period, the appeal shall stand **dismissed** with no order as to costs."

The word **dismissed** was replaced with the word **accepted** later on, on an application having been filed under Section 151/152 CPC. A sum of Rs.2,000/- was to be paid to Smt. Nimli by Tara Chand, Bhagwana and Sheo Ram on or before 1.10.1976.

The version of Smt. Nimli was that this amount of Rs.2,000/- having not been paid to her, she continued to be the owner. She sold her share to one Ram Kishan (respondent No.1) and to Smt. Murti (respondent No.2) vide sale deed dated 19.8.1987.

On this, Bhagwana, (father of the appellant), filed a civil suit alleging that the amount of Rs.2,000/- was paid to Smt. Nimli before the stipulated date vide receipt dated 1.10.1976, as a result of

which their appeal stood allowed in terms of the compromise dated 15.8.1976 and Smt. Nimli was no longer the owner. Therefore, the sale deed executed by her was not binding on them. Tara Chand also filed a similar suit. Both these civil suits were consolidated. These civil suits were contested by Smt. Nimli (predecessor in interest of respondents No. 3 to 6).

Issues were framed. The parties led the evidence. However, the said suit was dismissed by the learned trial Court vide judgment and decree dated 22.2.2002 by holding that the amount of Rs.2,000/- was not paid in stipulated time, as a result of which, Smt. Nimli continued to be the owner of the suit land. The present appellant and Tara Chand filed the appeals against the said judgment. The learned Lower Appellate Court also upheld the finding of fact recorded by the learned trial Court and dismissed both the appeals vide judgment and decree dated 6.3.2006.

Hence, the present appeal.

The submission of the learned counsel for the appellant was that the receipt dated 1.10.1976 has been proved not only by Sh. H.R. Mehta, Advocate PW-1, but it was also proved by Vijay Kumar Rustogi, handwriting and finger print expert PW-3, who had reported that outer ridges of the thumb impression in dispute tallied with the outer ridges of the thumb impression of Smt. Nimli, although the main portion was blurred. It was also submitted that the observations made by the Courts below that Sh. H.R. Mehta, Advocate did not know Smt. Nimli personally, was also incorrect as Sh. H.R. Mehta was the counsel of Smt. Nimli in the earlier litigation. Hence, it was

prayed that the impugned judgments be set aside and the appeal be accepted.

These submissions have been considered. Smt. Nimli has specifically appeared in the witness box and denied if any amount was paid to her by any of her three brothers, namely, Bhagwana, Tara Chand and Sheo Ram. She also denied if she had executed any receipt in their favour. On the other hand, none of the three brothers, namely, Sheo Ram, Tara Chand or Bhagwana had appeared in the witness box to assert that any of them had made the payment of Rs.2,000/- to Smt. Nimli in compliance with compromise decree dated 15.8.1976. The payment of Rs.2,000/- by Tara Chand or by Bhagwana or for that matter, by Sheo Ram, was in the personal knowledge of these persons. Therefore, making of the statement by the attorney of Tara Chand does not amount to proof of those facts which were in personal knowledge of Tara Chand or of Bhagwana. Therefore, the law laid down by the Hon'ble Supreme Court was clearly applicable to the facts of the present case that when a person fails to appear in person, in support of his version, then the presumption of law shall go against that person. Since this fact was in the personal knowledge of Tara Chand or Bhagwana or Sheo Ram, therefore, their non-appearance as witnesses in the witness box is a material circumstance, which stabs their case fatally, particularly when Smt. Nimli had appeared as DW-12 and specifically denied having received Rs.2,000/- from any of them.

The submission of the learned counsel for the appellant was that since the receipt has been proved, therefore, the non-appearance

of Tara Chand or Bhagwana or Sheo Ram was immaterial. It was submitted that the receipt has been proved by a person of status, namely, Sh. H.R. Mehta, Advocate, who appeared as PW-1.

This submission also has no force. Smt. Nimli is resident of village Nuni Awal. Tara Chand is also the resident of the same village, so also was Bhagwana, while Sh.H.R. Mehta, Advocate was a practicing Advocate in Narnaul. If the amount was to be paid by Tara Chand or Bhagwana or Sheo Ram, they would have made the payment to Smt. Nimli in the village itself and the receipt could have been got written from any educated person of that village. But if they were to go to Narnaul to give a legal shape to the receipt, then the same could have been got scribed from a regular deed writer/scribe, so that an entry could have been made in the register of the deed writer and the receipt would have assumed legal shape. Thirdly, if an Advocate was to be engaged for writing the receipt, the parties could have filed an application in the same Appellate Court in which the compromise decree dated 15.8.1976 was passed, so that the receipt or its execution could have become a part of that Court file. But that was not done. However, neither of these three remedies were adopted. Therefore, the execution of the receipt by Sh. H.R. Mehta PW-1 is highly insufficient to prove the version of the appellant.

Moreover, the Advocates come across with hundreds of litigants and it cannot be pleaded or believed if each Advocate has personal knowledge about the identity of each of his client. The Advocate believes whatever particulars are given to him by the party concerned, but after the case is over, the lawyer no longer remembers

as to which party had come to him and what were his/her particulars or identity. Moreover, as has been observed by the Courts below Sh. H.R. Mehta PW-1 has not recorded in his endorsement recorded on the alleged receipt dated 1.10.1976, if he knew Smt. Nimli personally. He only deposed in the Court but no such endorsement has been made on the receipt dated 1.10.1976.

For the reasons discussed above, I find no ground to interfere with the concurrent finding of fact recorded by the Courts below.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

1.9.2006.
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